

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,

Plaintiff,

v.

FACEBOOK, INC.,

Defendant.

CIVIL ACTION NO.: 2018 CA 008715 B
Judge Fern Flanagan Saddler
Next Court Date: March 22, 2019
Event: Initial Conference

DECLARATION OF JOSHUA S. LIPSHUTZ

I, Joshua S. Lipshutz, declare as follows under penalty of perjury:

1. I am a partner at the law firm of Gibson, Dunn & Crutcher. I maintain my law practice at 1050 Connecticut Ave. NW, Washington, D.C. 20036. I have personal knowledge of the facts set forth in this declaration and, if called to testify, I could and would competently testify to them.
2. Attached as **Exhibit 1** is a true and accurate copy of excerpts of the transcript of the March 6, 2019 hearing on Facebook, Inc.'s motion for a protective order and to stay discovery in the above-captioned matter.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 20, 2019.

By: /s/ Joshua S. Lipshutz

Joshua S. Lipshutz
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Exhibit 1

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

- - - - - x
:
DISTRICT OF COLUMBIA, : Docket Number: 2018 CAB 008715
Plaintiff, :
:
vs. :
:
FACEBOOK, INC., :
Defendant. :
: Wednesday, March 6, 2019
- - - - - x Washington, D.C.

The above-entitled action came on for a hearing
before the Honorable FERN FLANAGAN SADDLER, Associate
Judge, in Courtroom Number 100.

APPEARANCES:

On Behalf of the Plaintiff:

JIMMY R. ROCK, Esquire
Washington, D.C.

On Behalf of the Defendant:

JOSHUA LIPSHUTZ, Esquire
Washington, D.C.

19-01192

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1 any allegation showing any connection of Facebook's
2 activities to the District of Columbia other than the fact
3 that some D.C. residents are users of Facebook.

4 Other courts when faced with that exact type of
5 scenario have routinely, and consistently dismissed
6 allegations against Facebook for lack of personal
7 jurisdiction whether --

8 THE COURT: To whit, name some.

9 MR. LIPSHUTZ: The Northern District of Ohio,
10 the Western District of Washington, the Northern District
11 of Illinois, all cases cited in our motion to dismiss
12 papers.

13 And the mere existence of users of the website
14 in the District of Columbia is not enough to grant -- for
15 this Court to have personal jurisdiction over Facebook,
16 and that's been the consistent holding across the courts
17 that I just mentioned.

18 Our other argument is based on the clear
19 disclosures that we provided to users regarding the very
20 activities that are at issue in this case, and, again,
21 with respect to that argument, courts have accepted and
22 dismissed cases on that basis involving Facebook.

23 The Ninth Circuit just a few weeks ago in the
24 Smith v. Facebook case dismissed a complaint, affirmed a
25 dismissal of a complaint based on the same disclosures

1 holding that those disclosures were clear, and
2 unambiguous, and in the Northern District of California
3 just a few weeks ago in the multi-district litigation in
4 this very case, in other words, the multi-district
5 litigation dealing with these very same issues, Judge
6 Chabria in the Northern District of California effectively
7 dismissed the complaint, ordered the complainants to amend
8 their complaint, finding that, again, Facebook's
9 disclosures on these very issues were clear. That was one
10 of the things he said at the hearing, and we quote that in
11 our papers.

12 So we have at least two very strong grounds for
13 dismissal of this case, and we think based on the case law
14 at a minimum the Court should stay discovery while the
15 Court has an opportunity to review those arguments, and
16 decide whether we have, in fact, stated grounds for
17 dismissing the case.

18 We have already produced over 130,000 documents
19 to the District as part of their investigation that
20 preceded the filing of their complaint, pursuant to
21 subpoenas, and, so, we don't see why they need any further
22 discovery at this time while their motion to dismiss is
23 pending.

24 THE COURT: All right. As succinctly as
25 possible, would you just put your opposition, if any, on

1 the record?

2 MR. ROCK: Sure, and I'll focus --

3 THE COURT: Then I will rule.

4 MR. ROCK: Sure, I will -- and I'll focus, Your
5 Honor, on the District's responses to what the points
6 Facebook just made.

7 This is a consumer protection enforcement action
8 where after conducting an investigation, the Attorney
9 General concluded that Facebook had, and is continuing to
10 violate the District's consumer protection laws in
11 connection with hundreds of thousands of D.C. consumers
12 that are Facebook customers, and based upon that, the
13 District has filed its complaint in this case.

14 Facebook just pointed to what it claims is the
15 lack of facts supporting personal jurisdiction in the
16 District's complaint. That's not accurate just on the
17 basic fact that the complaint sets out the fact that there
18 are hundreds of thousands of D.C. consumers who are
19 Facebook customers here, and are, have been, and continue
20 to be, as the Attorney General alleges, victims of
21 unlawful trade practices.

22 But, also Facebook makes a mistake in trying to
23 hang its argument only on what appears in the District's
24 complaint when it comes to the personal jurisdiction
25 grounds.

1 The grounds for personal jurisdiction are not
2 required to be set out in full in the complaint. In fact,
3 Rule 8 doesn't even require the plaintiff to say anything
4 about the basis for personal jurisdiction. Whenever a
5 defendant challenges personal jurisdiction, it then
6 becomes the obligation of the plaintiff to come forward
7 with those facts.

8 So one fundamental flaw in Facebook's request
9 for a stay here is that it focuses on what's in the
10 District's complaint, and doesn't focus on the other
11 record, the other evidence, that's now before the Court.

12 Last Friday the District filed its opposition to
13 Facebook's motion to dismiss, and where it was actually
14 required to, came forward with evidence that strongly
15 supports personal jurisdiction, and in connection with
16 evaluating whether or not to grant a motion to stay, which
17 is the extraordinary step here.

18 The Superior Court's rules contemplate the
19 discovery starts as soon as the case is filed in
20 supporting a motion to stay. Facebook bears a very heavy
21 burden of convincing the Court that it's very likely to
22 succeed on the merits here, and it can't do that based
23 upon just a couple of pieces of evidence that are before
24 the Court now in connection with the District's opposition
25 to the motion to dismiss.